No. 83-351

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

PUERTO RICO ELECTRIC POWER AUTHORITY,
Petitioner,

v.

GENERAL ELECTRIC COMPANY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
COMMONWEALTH OF PUERTO RICO

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The interlocutory order of the Supreme Court of Puerto Rico, which the petitioner asks this Court to review, does not present any of the questions set out in the petition. The only questions presented by that order are:

1. Whether the order of the Supreme Court of Puerto Rico is a "final judgment or decree" within the meaning of 28 U.S.C. § 1258 where there are substantial further proceedings to be had in the local trial court and the case fits none of the exceptions to the final judgment rule enunciated in *Cox Broadcasting Corp.* v. *Cohn*, 420 U. S. 469 (1975).

2. Whether it was impermissible for the Supreme Court of Puerto Rico to order dismissal of a federal civil action filed in the local Puerto Rico court where,

(a) a parallel action raising identical issues was proceeding in federal court and was at a more advanced stage than the local court action, and

(b) local Puerto Rico law and policy aimed at avoiding duplicative litigation would require dismissal of an action based on local law.

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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The respondent, General Electric Company ("General Electric"), respectfully requests that this Court dismiss or deny the petition for writ of certiorari, seeking review of the interlocutory order of the Supreme Court of Puerto Rico in this case.[1]

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[1] Pursuant to Supreme Court Rule 28.1, General Electric states that it has no parent companies. A list of its subsidiaries (except wholly-owned subsidiaries) and affiliates is attached hereto as Exhibit A.

OPINION BELOW

The interlocutory order of the Supreme Court of Puerto Rico is unreported; it appears in Appendix A to the petition for writ of certiorari. The decision of the local Puerto Rico trial court also is unreported; it appears in Appendix B to the petition for writ of certiorari.

JURISDICTION

For reasons discussed below under Reasons Why The Writ Should Be Dismissed Or Denied, the order of the Supreme Court of Puerto Rico is not a final judgment; jurisdiction does not exist under 28 U. S. C. § 1258(3), the jurisdictional provision expressly invoked by the petitioner; and the writ therefore should be dismissed for want of jurisdiction.

STATEMENT OF THE CASE

The petitioner, Puerto Rico Electric Power Authority ("PREPA"), filed suit against General Electric and others in the Superior Court of the Commonwealth of Puerto Rico on March 10, 1981, alleging five causes of action. Four of these allegedly arose under local law; the fifth was based on Section 4(c) of the federal Racketeer Influenced and Corrupt Organizations Act ("RICO") (18 U. S. C. § 1964(c)).

On August 10, 1981, General Electric moved to dismiss the RICO claim for lack of jurisdiction. The motion was predicated on the ground that RICO Section 4(c) is expressly patterned after and virtually identical to Section 4 of the Clayton Act (15 U. S. C. § 15), which has uniformly been held to confer exclusive jurisdiction on the federal courts to hear private actions under the federal antitrust laws. Thus, General Electric argued that when Congress enacted Section 4(c), it clearly intended that the federal courts similarly be vested with exclusive jurisdiction to hear private RICO actions.

Shortly after General Electric filed its motion to dismiss, PREPA, on August 31, 1981, refiled its RICO claim in the federal district court in Puerto Rico. The Commonwealth trial court denied General Electric's motion to dismiss on January 15, 1982. At General Electric's request, the Supreme Court of Puerto Rico granted review and, on May 4, 1983, reversed the trial court and ordered the RICO claim dismissed.

By May 4, 1983, there had been substantial pretrial proceedings in the parallel federal case. General Electric had answered the complaint and filed a counterclaim. General Electric had filed a motion to protect its right to trial by an unbiased jury (virtually all potential jurors in Puerto Rico are PREPA rate payers). PREPA had filed a motion attacking General Electric's counterclaim. Both of these motions had been fully briefed. The court had entered extensive pretrial orders pertaining, among other things, to the conduct of

discovery. The parties had exchanged and answered detailed interrogatories. In contrast, there had been virtually no activity in the local Commonwealth court action. As of May 4, 1983, the parties had yet to initiate discovery.

The Supreme Court of Puerto Rico did not reach the question whether the federal courts have exclusive jurisdiction over private RICO actions. Instead, it based its decision on an independent local law ground. The Supreme Court of Puerto Rico stated:

> "Assuming, *in arguendo*, that state courts have concurrent jurisdiction with federal courts in civil actions under RICO, the particular facts of this case convince us that the lower court should dismiss the causes of action. We do not consider it necessary to resolve the controversy with regard to our jurisdiction when the appellee itself filed an identical claim before the federal forum, which, according to what was informed at the hearing held before this court last April 18, is in a procedural stage more advanced than the instant case. *Barnett* v. *Baltimore & Ohio Railway*, 200 N. E. 2d 473 (1963)." (Pet. 2a).

The Supreme Court of Puerto Rico further noted that, in the pending federal court proceeding, the parties would have "... the constitutional benefit safeguarded by the Seventh Amendment of the Constitution of the United States of having a trial by jury ... not available in our forum." (Pet. 2a).. The court added that "[i]t appears from the record that [PREPA] has applied for and obtained trial by jury in the United States District Court for the District of Puerto Rico." (Pet. 3a).

Thus, the court below held that—even assuming that the local court has concurrent jurisdiction to hear private RICO actions—given the "particular facts of this case", including the pendency of a parallel and substantially more advanced proceeding in the federal district court, the RICO claim in the local court should be dismissed. In doing so, the court applied local Puerto Rico law and policy aimed at avoiding duplicative litigation.

REASONS WHY THE WRIT SHOULD BE DISMISSED OR DENIED

As discussed more fully below, the writ should be dismissed or denied because (1) the Court lacks jurisdiction to review the interlocutory order of the Supreme Court of Puerto Rico; (2) the arguments of the petitioner set out in Points I-V (Pet. 5-12), as well as the first and second "Questions Presented" in the petition, are based entirely on a misstatement of the holding of the court below; (3) in Point VI (Pet. 12-15), and in the third of the "Questions Presented" in the petition, the petitioner asks the Court to decide a question neither addressed nor decided by the court below; and (4) the petitioner will suffer no prejudice from the decision below and it therefore would be extremely wasteful of the Court's scarce time to grant review.

I. The Order Of The Supreme Court of Puerto Rico Is Not A "Final Judgment Or Decree" Within The Meaning Of 28 U. S. C. § 1258; Therefore, The Writ Should Be Dismissed For Want Of Jurisdiction.

Under 28 U. S. C. § 1258, this Court has jurisdiction to review only "[f]inal judgments or decrees rendered by the Supreme Court of . . . Puerto Rico."[2] The order at issue here,

[2] The cases cited and discussed in this section construe and apply 28 U. S. C. § 1257. But they are equally applicable to Section 1258. The two provisions are identical, except that Section 1257 relates to judgments or decrees of the "highest court of a State in which a decision could be had", while Section 1258 covers judgments or decrees of the Supreme Court of Puerto Rico. Section 1258 was adopted ". . . in view of the change of the status of Puerto Rico from that of a territory to that of an associated Commonwealth under the Act of Compact" and for the purpose of providing for ". . . review [of] final judgments or decrees of the Supreme Court of Puerto Rico on certiorari or appeal in the same manner as judgments from the highest courts of the several States of the Union are now reviewed by [the Supreme] Court." Sen. Rep. No. 735, 87th Cong., 1st Sess., August 14, 1961. This Court's Rule 54 provides that "[t]he term 'state court' when used in the Rules of this Court, normally includes . . . the Supreme Court of the Commonwealth of Puerto Rico (See 28 U. S. C. §§ 1257, 1258), and references in these Rules to the law and statutes of a State normally include the law and statutes . . . of the Commonwealth of Puerto Rico."

however, disposes of only one of the five counts in petitioner's complaint. Petitioner is going forward on the remaining four counts. Thus, there are substantial further proceedings to be had in the Commonwealth trial court. Under these circumstances, the order which petitioner asks the Court to review quite clearly is not final "as an effective determination of the litigation" (*Market Street R. Co.* v. *Railroad Comm'n of California*, 324 U. S. 548, 551 (1945)) or conclusive as to the entire subject matter of, and all claims and parties involved in, the litigation (*Andrews* v. *United States*, 373 U. S. 334, 340 (1963)). Accordingly, it is not a "final judgment or decree" within the meaning of Section 1258. *See O'Dell* v. *Espinoza*, 456 U. S. 430 (1982); *Minnick* v. *California Department of Corrections*, 452 U. S. 105 (1981); *Flynt* v. *Ohio*, 451 U. S. 619, 620 (1981); *Radio Station WOW, Inc.* v. *Johnson*, 326 U. S. 120, 124 (1945) (in general, the final judgment rule "preclude[s] reviewability . . . where anything further remains to be determined by a State court, no matter how dissociated from the only federal issue that has finally been adjudicated by the highest court of the State").

Although there are a limited number of situations in which a state court judgment may be treated as "final" for jurisdictional purposes even though further proceedings are to take place in the state court, *see Cox Broadcasting Corp.* v. *Cohn*, 420 U. S. 469, 477-483 (1975), this case fits none of these categories. The only one that conceivably could apply here is the second situation discussed by this Court in *Cox*: cases "in which the federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings." *Id.* at 480. To fall within this category, however, the case must also satisfy the following requirement: "[T]he federal issue would not be mooted or otherwise affected by the proceedings yet to be had because those proceedings have little substance, their outcome

is certain, or they are wholly unrelated to the federal question." *Id.* at 478.

This certainly is not true here. If the remaining Commonwealth law counts go to trial and General Electric prevails, the federal issue[3] presented here for review will be mooted. The basis of the RICO claim is the allegation that General Electric improperly secured the award of a contract that it otherwise would not have won. This allegation also forms the basis for a claim still in the case which is founded solely on Commonwealth law. If General Electric prevails at trial because PREPA is unable to prove this allegation, PREPA will be precluded under well settled principles of collateral estoppel from asserting *any* claim based on such allegation, including its RICO claim. This will render moot all of the issues PREPA asks the Court to review and decide now.

Further proceedings in the parallel federal action also could render such issues moot. If PREPA goes to trial on its RICO claim in that action and prevails, there clearly would be no need to decide these issues. The same would be true if General Electric prevailed in that action. In that case, the principles of *res judicata* and collateral estoppel would operate to bar any subsequent RICO claim by PREPA in *any* court; this, of course, would moot the issues presented here.

Since there is no "final judgment or decree", the writ should be dismissed for want of jurisdiction.

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[3] The petition actually asks the Court to decide two questions. The first is whether the order of the Supreme Court of Puerto Rico discriminated against federal law and therefore was not a proper application of the "valid excuse" doctrine; the second is whether the federal district courts are vested with exclusive jurisdiction to hear private RICO actions. The second of these was not decided by the court below.

II. Points I-V (Pet. 5-12) Are Based Entirely On A Mischaracterization Of The Supreme Court of Puerto Rico's Order.

1. The Supreme Court of Puerto Rico held that, under the particular facts of this unusual case where a parallel federal action raising identical issues is proceeding and is at a more advanced stage, the local court will stay its hand to avoid a waste of judicial and private resources and an unseemly race to judgment. In so holding, the court applied local Puerto Rico law and policy aimed at avoiding simultaneous lawsuits in two courts between the same parties on the same claims.

Prior to the Puerto Rico judicial reform of 1952,[4] it was well settled under Puerto Rico law that "... a complaint should be dismissed if there is another action pending between the same parties for the same cause ...." *Torres* v. *Cabrera*, 73 P. R. R. 709, 712 (1952). *See also* Section 105 (3), Puerto Rico Code of Civil Procedure (1933 ed.), 32 L. P. R. A. § 561(3); *Sevilla* v. *Vélez*, 71 P. R. R. 390, 392 (1950); *Munoz* v. *Solá*, 48 P. R. R. 760, 766-768 (1935); and *United P. R. Bank* v. *Nieves*, 45 P. R. R. 72, 75-76 (1933). Since 1952, there has been only one trial court in Puerto Rico, and the problem of duplicative lawsuits in different venues (or Sections of the Superior Court) has been resolved by transferring the actions to the most appropriate venue and consolidating them there. *Zambrana* v. *Tribunal Superior*, 100 P. R. R. 178, 179 (1971). Where one case is pending in the local court and the other in the federal court, however, transfer and consolidation obviously is not possible. In such a situation, the question under local Puerto Rico law is whether the local court should proceed with

[4] *See* 4 L.P.R.A. 1; Clark and Williams, *The New Judiciary Act of Puerto Rico: A Definitive Court Reorganization*, 61 Yale L. J. 1147 (1952).

the action or stay its hand in the face of a duplicative proceeding in the federal court.[5] The factors and considerations that govern determination of that question are the same irrespective of whether the action is based on federal or local law.

Here, the Supreme Court of Puerto Rico concluded, correctly, that the local court should stay its hand. The factors that support the court's conclusion are as follows. First, the parallel federal proceeding is at a more advanced stage. Second, PREPA voluntarily went to the federal court and has shown itself to be perfectly willing to litigate its RICO claim there. Third, the federal court is an adequate forum for the prompt and just resolution of the RICO claim and, incidentally, affords the parties the right to a jury trial, which is unavailable in the local court. Finally, to go forward with the same action in both the federal and local courts would be terribly wasteful and would unnecessarily create the potential for undesirable friction between the federal and local courts.

Given these factors, principles of sound judicial administration—as well as an even-handed application of local Puerto Rico law and policy against duplicative litigation— compel the conclusion that the Commonwealth court should stay its hand, which is precisely what the Supreme Court of Puerto Rico decreed.

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[5] This is a question of local Puerto Rico law. This Court ordinarily does not review issues of state law. Prior to 1980, the Supreme Court Rule setting forth factors which might justify a grant of certiorari (old Rule 19) indicated that the Court might review on certiorari cases in which a court of appeals or a state court has "decided an important state or territorial question in a way in conflict with applicable state or territorial law. . . ." This Rule was revised in 1980 to exclude any reference to the review of issues of state or territorial law. *See* Rule 17 of the Revised Rules of the Supreme Court.

PREPA nevertheless asserts in Point I (Pet. 5-6) that the Supreme Court of Puerto Rico ordered the RICO claim dismissed because jury trial is not available in the Commonwealth court. PREPA goes on to argue in Point I that this holding in effect destroys concurrent jurisdiction over all federal civil actions in Puerto Rico because, in the absence of jury trial, the local courts could never exercise jurisdiction over such actions.

As we have shown, and as is readily apparent from the opinion below, the Supreme Court of Puerto Rico clearly did no such thing. First, had the court held, as the petitioner claims, that the lack of jury trial required the federal claim to be dismissed, the parallel federal proceeding would have played no role in its decision; it would have been completely irrelevant. But it is unmistakably clear that the federal action was the cornerstone of the court's decision:

> "We do not consider it necessary to decide the jurisdictional issue when respondent itself filed an identical claim in the federal forum which is . . . concurrently at a more advanced stage of the proceedings than [the] captioned case." (Pet. 2a).

Second, had the court said, as the petitioner contends, that the Commonwealth courts may never exercise concurrent jurisdiction over federal civil causes of action, the court certainly would not have assumed *arguendo* that the local courts have such jurisdiction over private RICO actions.[6] (*See* Pet. 2a).

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[6] As discussed above, the Court held that—even assuming *arguendo* that the local courts have concurrent jurisdiction over RICO civil actions—the RICO claim should be dismissed. This assumption, quite obviously, makes sense only if one concedes the *possibility* of concurrent jurisdiction in the local courts.

Third, in its statement alluding to the lack of jury trial in the Commonwealth courts, the Supreme Court of Puerto Rico cited *Garcia Mercado* v. *Superior Court*, 99 P. R. R. 287 (1970), *cert. denied*, 401 U. S. 1003 (1971) (Pet. 2a), where it had previously decided that the local Puerto Rico courts had concurrent jurisdiction over federal actions based on the Jones Act notwithstanding the lack of jury trial in those courts. Had the Supreme Court of Puerto Rico said, as the petitioner contends, that the Commonwealth courts may never exercise concurrent jurisdiction over federal civil causes of action, the court certainly would not have cited, with apparent approval, the *Mercado* case. The obvious and critical difference between *Mercado* and the instant case is that there is a parallel federal proceeding here while in *Mercado* there was not.

Finally, although the court noted that the parallel federal proceeding had the advantage of a jury trial, the court did not ground its decision on that observation.[7] It is axiomatic that this Court reviews final judgments, not statements extraneous to the holding below. *Black* v. *Cutter Laboratories*, 351 U. S. 292, 297-298 (1956).

2. Point II (Pet. 6-7) is based on the same erroneous assertion as Point I (*i.e.*, that the court below ordered the RICO claim dismissed because jury trial is not available in the local court). Point II argues that the order of the Supreme Court of Puerto Rico is inconsistent with *Acevedo* v. *Collazo*, 82 J. T. S. 30 (1982) and *Garcia Mercado* v. *Superior Court*, 99 P. R. R. 287 (1970), *cert. denied*, 401 U.S. 1003 (1971) (in which the Supreme Court of Puerto Rico decided that the Commonwealth courts have concurrent jurisdiction to hear federal actions based

[7] Even if the Supreme Court's observations as to the availability of a jury trial were to be considered a holding, it would be, at most, an *independent, alternative* ground for the decision, and would not affect the principal basis thereof—avoidance of duplicative litigation—which, by itself, provided an adequate basis for dismissal.

on 42 U. S. C. § 1983 and the Jones Act, respectively). This is so, presumably, because the order, according to PREPA, means that the local Puerto Rico courts could never exercise concurrent jurisdiction over a federal civil cause of action.

For the reasons discussed above, the order in issue clearly is not inconsistent with either of these cases or with the proposition that the local courts of Puerto Rico may exercise jurisdiction over certain federal civil causes of action. First, the opinion below clearly was not *based* on the unavailability of a jury trial. Second, far from precluding concurrent jurisdiction over federal civil actions, the opinion below concedes the possibility of such jurisdiction over RICO civil actions.

3. Point III (Pet. 7) asserts that the order of the Supreme Court of Puerto Rico conflicts with the decisions of this Court that indicate that the states may alter, modify or even eliminate trial by jury in civil cases. This assertion is based entirely on the same misstatement of the Puerto Rico Court's order as Points I and II—that that court ordered the RICO claim dismissed because of the absence of jury trial in the local courts. As shown above, however, that order does not *hold* (as the petitioner asserts), that the lack of jury trial in the local courts precludes them from hearing federal civil causes of action. Accordingly, the order in issue does not conflict with the jury trial decisions of this Court.

4. Point IV (Pet. 8-10) argues that the order of the Supreme Court of Puerto Rico discriminates against federal law and therefore represents an improper application of the "valid excuse" doctrine. Like Points I-III, this argument misstates the basis of the order below and is plainly incorrect.

In Point IV, the petitioner contends (1) that the order means that local courts in Puerto Rico may decline to exercise jurisdiction in all civil cases based on federal law because jury trial is not available in such courts, and (2) that this discriminates against federal law. As shown above, however, the

order in issue is not predicated on lack of jury trial in the local courts, and therefore does not mean what the petitioner suggests it does. Also as shown above, the order in issue reflects an *even-handed* application of local Puerto Rico law and policy directed against duplicative litigation. That law and policy requires a local court, faced with a parallel proceeding in another court, to stay its hand (or transfer the case to the other court) without regard to whether the other court is another local court (or Section of the Superior Court) or a federal court and, even more importantly, whether the action is based on local or federal law. Because the local law and policy on which the opinion below is based treats federal and local law claims in the *same* manner, that law and policy does not discriminate against federal law. Accordingly, that law and policy provides a "valid excuse" for the Commonwealth court to decline to exercise jurisdiction in this case. *See Missouri ex rel. Southern Railway* v. *Mayfield*, 340 U. S. 1, 3-5 (1950); *McKnett* v. *St. Louis & San Francisco Railway Co.*, 292 U. S. 230, 233-234 (1934); *Douglas* v. *New York, N.H. & H. R. Co.*, 279 U. S. 377, 387-88 (1929); *Mondou* v. *New York, N.H. & H. R. Co.*, 223 U. S. 1, 57-59 (1912); *Barnett* v. *Baltimore & Ohio Railroad Co.*, 200 N. E. 2d 473, 476 (Ohio Ct. App. 1963).

5. Point V (Pet. 10-12) (1) quibbles with the application by the Supreme Court of Puerto Rico of the local law and policy directed against duplicative litigation,[8] and (2) argues that the court below was wrong in deciding that the federal case was more advanced than the local one.

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[8] For example, the petitioner implies (Pet. 11) that applicable law only permits dismissal or stay of the action that is filed *second* —no matter how much further advanced the later filed case may be. The petitioner cites no authority for this suggestion and totally ignores this Court's statement in *Moses H. Cone Memorial Hospital* v. *Mercury Construction Corp.*, ____ U. S. ____, 103 S. Ct. 927, 940 (1983) that "priority should not be measured exclusively by which complaint was filed first, but rather in terms of how much progress has been made in the two actions."

The application by the Supreme Court of Puerto Rico of local law and policy is strictly a matter of local law and therefore is not an appropriate subject for review on certiorari by this Court. *See Missouri ex rel. Southern Railway* v. *Mayfield, supra*, 340 U.S. at 4; Rule 17 of the Revised Rules of the Supreme Court. With respect to the question of which case is more advanced, the Supreme Court's assessment was unquestionably correct.[9] In any event, it is not the responsibility of this Court to review and correct the factual findings and premises on which *state* law procedural decisions are based. *United States* v. *Johnston*, 268 U.S. 220, 227 (1925); *Grayson* v. *Harris*, 267 U.S. 352, 358 (1925); *Portland Ry. Co.* v. *R.R. Comm'n of Oregon*, 229 U.S. 397, 412 (1913). Even were this not so, this Court, sitting as an appellate court, should not disturb factual findings *of any sort* unless there is "a very obvious and exceptional showing of error." *Graver Tank & Mfg. Co.* v. *Linde Co.*, 336 U.S. 271, 275 (1949). *See also United States* v. *Ceccolini*, 435 U.S. 268 (1978). No such showing has been or could be made here.

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[9] At the time of its decision in this case, the Supreme Court of Puerto Rico was advised that in the federal action General Electric had answered and asserted a counterclaim; General Electric had submitted a motion aimed at ensuring trial by an unbiased jury; PREPA had filed a motion to dismiss General Electric's counterclaim; both motions were fully briefed and awaited decision; the court had entered extensive pretrial orders governing, among other things, discovery; and the parties had exchanged and answered extensive interrogatories going to the heart of their respective cases. By contrast, in the Commonwealth Court, as of that time, neither General Electric nor PREPA—the principal parties—had initiated any discovery whatever. (Appendix M to the petition refers to interrogatories in the local court action. These were propounded by certain defendants other than General Electric and did not deal to any significant extent with PREPA's claims against General Electric. In any event, PREPA has refused to answer the bulk of these interrogatories, and the propounding defendants have made no effort to compel answers.)

III. In Point VI (Pet. 12-15) The Petitioner Asks The Court to Decide an Issue That the Court Below Did Not Address—Whether RICO Section 4(c) Confers Exclusive Jurisdiction On the Federal Courts.

The petitioner asks the Court to decide an issue not reached by the court below—*i.e.*, whether RICO § 4(c) confers exclusive jurisdiction on the federal courts. In general, this Court will not decide questions not addressed and decided by the court below. *Labor Board* v. *Sears, Roebuck & Co.*, 421 U. S. 132, 163-64 (1975); *Adickes* v. *Kress & Co.*, 398 U. S. 144, 147 n. 2 (1970); *California* v. *Taylor*, 353 U. S. 553, 557 n. 2 (1957). Determination of the jurisdiction issue by this Court can and should await a case where it has been addressed and decided, assuming the existence of a conflict among the circuits or some other extraordinary factor justifying review on certiorari.

In any event, in its rather extensive argument on the merits of this issue, the petitioner conveniently ignores the single factor that clearly demonstrates that Congress intended RICO § 4(c) to confer exclusive jurisdiction on the federal courts. As noted above, the text of RICO § 4(c) is virtually identical to that of Section 4 of the Clayton Act. The RICO provision reads:

> "*Any person injured in his business or property by reason of a violation of section 1962* of this chapter *may sue therefor in any* appropriate *United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.*" (Emphasis added.) 18 U. S. C. § 1964(c).

And Section 4 of the Clayton Act reads:

> "*Any person* who shall be *injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States* in the district in which the defendant resides or is found or has an

agent, without respect to the amount in controversy, *and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.*" (Emphasis added.) 15 U. S. C. § 15.

This is no accident. Congress intentionally modeled the RICO provision after its antitrust counterpart.[10]

For decades prior to the enactment of RICO, Section 4 of the Clayton Act had been interpreted *without exception* to confer exclusive jurisdiction over private actions under the antitrust laws on the federal courts. *See Freeman* v. *Bee Machine Co., Inc.*, 319 U. S. 448, 451, n. 6 (1943); *Kurek* v. *Pleasure Driveway and Park Dist. of Peoria*, 583 F. 2d 378, 379 (7th Cir. 1978), *cert. denied*, 439 U. S. 1090 (1979); *Miller* v. *Granados*, 529 F. 2d 393, 395 (5th Cir. 1976); *Cream Top Creamery* v. *Dean Milk Co.*, 383 F. 2d 358, 363 (6th Cir. 1967); *Engelhardt* v. *Bell & Howell Co.*, 327 F. 2d 30, 35 (8th Cir. 1964); *Young* v. *Seaway Pipeline, Inc.*, 576 P. 2d 1148, 1150 (Okla. 1977). *See also Blumenstock Bros.* v. *Curtis Pub. Co.*, 252 U. S. 436, 440 (1920) (construing Section 7 of the Sherman Act, whose language also is virtually identical to that of RICO § 4(c)). Congress, when it enacted RICO, surely was aware of this long-standing, uniform interpretation of the

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[10] For example, Congressman Celler summarized the House judiciary committee's efforts in proposing RICO Section 4(c) as follows:

> "... [T]itle IX [RICO] also creates *civil remedies modeled on those found in the antitrust field.* These include ... treble damage suits on the part of private parties who are injured." 116 Cong. Rec. 35196. (Emphasis added.)

Congressman Poff, one of the sponsors of RICO, reaffirmed that statement, explaining:

> "... [T]he committee has provided that private persons injured by reason of a violation of [RICO] may recover treble damages *in Federal courts*—another example of the anti-trust remedy being adapted for use against organized criminality." 116 Cong. Rec. 35295. (Emphasis added.)

antitrust treble damage provision.[11] Accordingly, when it chose to pattern RICO § 4(c) after the Clayton Act provision, Congress indicated in unmistakable terms its intention that Section 4(c) be read to confer exclusive jurisdiction on the federal courts. *See Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U. S. 473 (1981).

IV. PREPA Will Suffer No Prejudice From The Decision Below; It Would Be Enormously Wasteful Of This Court's Scarce Time To Grant Review Where, As Here, Its Decision Could Have No Substantial Impact On The Rights Of The Parties.

The petitioner is now going forward on its local law claims in the Commonwealth trial court and on its RICO claim in the federal court. There is every reason to believe that the federal action will be ready to go to trial before the local court action is. The petitioner makes no claim that it cannot obtain a fair adjudication of its RICO claim in the federal court; and, in any event, any such claim would be totally groundless.[12]

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[11] In any event, as this Court held in a similar situation involving the Civil Rights Act, it should be presumed "that Congress was thoroughly familiar with these unusually important precedents from this and other federal courts and that it expected its enactment to be interpreted in conformity with them." *See Cannon* v. *University of Chicago*, 441 U. S. 677, 696-699 (1979). *See also Merrill Lynch, Pierce, Fenner & Smith* v. *Curran*, 456 U. S. 353, 378-382 (1982); and *Lorillard* v. *Pons*, 434 U. S. 575, 581 (1978).

[12] As noted above, proceedings in the Commonwealth trial court most likely will moot the federal issue now presented for review. If it somehow survives, however, and a *final* judgment of the Supreme Court of Puerto Rico is brought before this Court, the Court will have jurisdiction to consider any substantial federal issues determined in earlier stages of the Commonwealth court proceedings. This Court's power to reexamine such questions would not be affected by any ruling that interlocutory orders of the Supreme Court of Puerto Rico became the law of the case. *Hathorn* v. *Lovorn*, 457 U. S. 255, 261-262 (1982).

Thus, petitioner clearly will suffer no prejudice from the decision below. Accordingly, it would be an extreme misallocation of judicial resources to grant interlocutory review in this case.

PREPA has not suggested any reason why it should be entitled to have the RICO claim go forward simultaneously in two courts. No decision of this Court has ever suggested that a state court is required to embroil itself in complex and time-consuming litigation at the same time that a federal court is plowing the same field. To burden the states with such a requirement would be a serious affront to our system of cooperative federalism.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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EXHIBIT A

The following are the subsidiaries (except wholly owned subsidiaries) and affiliates of General Electric Company.*

Evansville Cable TV, Inc.
Utah Development Company
Waipipi Iron Sands Limited
Central Queensland Coal Associates
General Electric-Goninan Engineering Services Ltd.
General Electric-Rickard Ltd.
F. R. Tulk & Co. Pty. Ltd.
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General Electric Mortgage Corporation
Lonestar Florida Pennsuco, Inc.

CERTIFICATE OF SERVICE

The undersigned, attorneys for respondent General Electric Company, and members of the bar of this Court, certify that on the 10th day of October, 1983, copies of the foregoing Brief of Respondent in Opposition to Petition for Writ of Certiorari were served, by certified air mail, postage prepaid, return receipt requested, upon Petitioner Puerto Rico Electric Power Authority, through its counsel, Alberto Santiago Villalonga, Esq., Santiago, Perez, Bermudez & Bruno, G.P.O. Box 3706, San Juan, Puerto Rico 00936, and Francisco Ponsa Feliu, Esq., G.P.O. Box 4423, San Juan, Puerto Rico 00936; and upon Jorge L. Izquierdo, Esq., G.P.O. Box 5032, San Juan, Puerto Rico 00936; and Leonardo Andrade, Esq., Goldman & Antonetti, P.O. Box 13486, Santurce, Puerto Rico 00908.

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